

Disaster Mitigation Program. This pilot program is authorized for 5 fiscal years (October–September), from 2000 through 2004, and has only been approved for limited funding. Therefore, approved loan requests are funded on a first come, first served basis up to the limit of program funds available (see § 123.411).

§ 123.401 What types of mitigation measures can your business include in an application for a pre-disaster mitigation loan?

To be included in a pre-disaster mitigation loan application, each of your business' mitigation measures must satisfy the following criteria:

(a) The mitigation measure, as described in the application, must serve the purpose of protecting your commercial real property (building) or leasehold improvements or contents from damage that may be caused by future disasters; and

(b) The mitigation measure must conform to the priorities and goals of the State or local government's mitigation plan for the community in which the business subject to the measure is located. To show that this factor is satisfied your business must submit to SBA, as a part of your complete application, a written statement from a State or local emergency management coordinator confirming this fact (see § 123.408). Contact your regional FEMA office for a list of your State's emergency management coordinators or visit the FEMA Web site at <http://www.fema.gov>.

§ 123.402 Can your business include its relocation as a mitigation measure in an application for a pre-disaster mitigation loan?

Yes, you may request a pre-disaster mitigation loan for the relocation of your business if:

(a) Your commercial real property (building) is located in a SFHA (Special Flood Hazard Area); and

(b) Your business relocates outside the SFHA but remains in the same participating pre-disaster mitigation community. Contact your regional FEMA office for a listing of communities participating in the Pre-Disaster Mitigation Program and SFHAs or visit the FEMA Web site at <http://www.fema.gov>.

§ 123.403 When is your business eligible to apply for a pre-disaster mitigation loan?

To be eligible to apply for a pre-disaster mitigation loan your business must meet each of the following criteria:

(a) Your business, which is the subject of the pre-disaster mitigation measure, must be located in a participating pre-disaster mitigation community. Each State, the District of Columbia, Puerto Rico, and the Virgin Islands have at least one participating pre-disaster mitigation community. Contact your regional FEMA office to find out the locations of participating pre-disaster mitigation communities or visit the FEMA Web site at <http://www.fema.gov>;

(b) If your business is proposing a mitigation measure that protects against a flood hazard, the location of your business which is the subject of the mitigation measure must be located in a Special Flood Hazard Area (SFHA). Contact your FEMA regional office to find out the locations of SFHAs or visit the FEMA Web site at <http://www.fema.gov>;

(c) As of the date your business submits a complete Pre-Disaster Mitigation Small Business Loan Application to SBA (see § 123.408 for what SBA's considers to be a complete application), your business, along with its affiliates, must be a small business concern as defined in part 121 of this chapter. The definition of small business concern encompasses sole proprietorships, partnerships, corporations, limited liability entities, and other legal entities recognized under State law;

(d) Your business, which is the subject of the mitigation measure, must have operated as a business in its present location for at least one year before submitting its application;

(e) Your business, along with its affiliates and owners, must not have the financial resources to fund the proposed mitigation measures without undue hardship. SBA makes this determination based on the information your business submits as a part of its application; and

(f) If your business is owning and leasing out real property, the mitigation measures must be for protection of

a building leased primarily for commercial rather than residential purposes (SBA will determine this based upon a comparative square footage basis).

§ 123.404 When is your business ineligible to apply for a pre-disaster mitigation loan?

Your business is ineligible to apply for a pre-disaster mitigation loan if your business (including its affiliates) satisfies any of the following conditions:

(a) Any of your business' principal owners is presently incarcerated, or on probation or parole following conviction of a serious criminal offense, or has been indicted for a felony or a crime of moral turpitude;

(b) Your business' only interest in the business property is in the form of a security interest, mortgage, or deed of trust;

(c) The building, which is the subject of the mitigation measure, was newly constructed or substantially improved on or after February 9, 1989, and (without significant business justification) is located seaward of mean high tide or entirely in or over water;

(d) Your business is an agricultural enterprise. Agricultural enterprise means a business primarily engaged (see § 121.107 of this chapter) in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries. Sometimes a business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of your business is not an agricultural enterprise, it may apply for a pre-disaster mitigation loan, but loan proceeds may not be used, directly or indirectly, for the benefit of the agricultural activities;

(e) Your business is engaged in any illegal activity;

(f) Your business is a government owned entity (except for a business owned or controlled by a Native American tribe);

(g) Your business presents live performances of a prurient sexual nature or derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the

presentation of any depictions or displays, of a prurient sexual nature;

(h) Your business engages in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for commercial rental);

(i) Your business is a non-profit or charitable concern;

(j) Your business is a consumer or marketing cooperative;

(k) Your business derives more than one-third of its gross annual revenue from legal gambling activities;

(l) Your business is a loan packager that earns more than one-third of its gross annual revenue from packaging SBA loans;

(m) Your business principally engages in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(n) Your business is primarily engaged in political or lobbying activities.

§ 123.405 How much can your business borrow with a pre-disaster mitigation loan?

Your business, together with its affiliates, may borrow up to \$50,000 each fiscal year. This loan amount may be used to fund only those projects that were a part of your business' approved loan request. SBA will consider mitigation measures costing more than \$50,000 per year if your business can identify, as a part of its Pre-Disaster Mitigation Small Business Loan Application, sources that will fund the cost above \$50,000.

§ 123.406 What is the interest rate on a pre-disaster mitigation loan?

The interest rate on a pre-disaster mitigation loan will be fixed at 4 percent per annum or less. The exact interest rate will be stated in the FEDERAL REGISTER notice announcing each filing period (see § 123.407).

§ 123.407 When does your business apply for a pre-disaster mitigation loan and where does your business get an application?

SBA will publish a notice in the FEDERAL REGISTER announcing the availability of pre-disaster mitigation loans. The notice will designate a 30-